IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

CRL.A.No. 1968 of 2004()

CC.22/2000 of SPL. COURT (NDPS ACT CASES), THODUPUZHA

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APPELLANT: 1ST ACCUSED

RAJU, S/O.MADHAVAN,
KUNNINPUTHENPURAYIL, KUMILY BHAGAM,
KUMILY VILLAGE.

BY ADVS. SRI.MATHEW ABRAHAM
SMT.PRIYA S.RANI

RESPONDENT: COMPLAINANT

STATE OF KERALA.

BY PUBLIC PROSECUTOR SRI. C.M. KAMMAPPU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER IN CRL.M.A.NO. 14011 OF 2004 IN CRL. APPEAL NO. 1968 OF 2004.

DISMISSED

4.7.2007 Sd/-(K.THANKAPPAN, JUDGE)

K.THANKAPPAN, J.

CRL. APPEAL NO. 1968 OF 2004

Dated this the 4th day of July, 2007

JUDGMENT

The first accused in C.C. No.22 of 2000 on the file of the Special Judge for N.D.P.S. Cases, Thodupuzha is the appellant. He along with two others faced trial for the offence punishable under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the N.D.P.S. Act").

2. The prosecution allegation was that on 31.3.1999 at about 3 a.m. while the Sub Inspector of Police attached to the Pala Police Station was on patrol duty along with his police party , they found an ambassador car bearing Registration No. KL-6/9211 parked by the side of the Pala-Ponkunnam road at a place called Paika in suspicious circumstances and that when the police party approached the car, two persons occupying the rear seat of the car fled away. It is the further allegation of the prosecution that the police party prevented the escape of accused Nos. 1

and 4 who were sitting in the front seat of the car and that on inspecting the car, the Sub Inspector of Police found a rexin hand bag beneath the arm of the rear seat of the car which contained eight polythene covers of different sizes filled with ganja oil (hashish). On weighing, it was found that the packets contained 2 Kgs. of hashish worth Rs.2 crores. Accused Nos. 1 and 4 were arrested on the spot and accused No.2 who escaped from the car was restrained by the people and he was also arrested. Accused No. 3 is absconding. To prove the case against the accused, the prosecution examined PWs.1 to 10 and relied on Exts.P1 to P14 and MOs.1 to 14. No oral or documentary evidence was adduced on the side of the defence. On closing the prosecution evidence, the accused were questioned under Section 313 Cr.P.C. The appellant herein and the other accused denied the allegations levelled against them. . After considering the entire evidence, the trial court found the appellant alone guilty of the offence punishable under Section 20(b)(ii)(C) of the N.D.P.S. Act, convicted him thereunder and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to undergo rigorous imprisonment for a further period of two years. Accused Nos. 2 and 4 were found not guilty and they were acquitted of the charges. Challenging the above conviction and sentence, the first accused has filed this appeal.

3. Heard the leaned counsel appearing for the appellant as well as the learned Public Prosecutor.

4. The main contentions raised by the learned counsel for the appellant are that the trial court did not appreciate the evidence properly and that resulted in miscarriage of justice as the other passenger in the car and the driver of the car were acquitted since the prosecution failed to prove any conspiracy between the appellant and the other accused. Counsel further submits that the investigating officers did not comply with Section 57 of the N.D.P.S. Act while arrest and seizure.

5. Before considering the contentions raised by the learned counsel appearing for the appellant, it is advantageous to consider the evidence relied on by the prosecution. PW.1 was the Sub Inspector of Police, Pala who detected the offence . He gave evidence to the effect that while he was on patrol duty along with his police party , he found an ambassador car bearing Registration No.KL-6/9211 parked by the side of the Pala-Ponkunnam road at a place called Paika in suspicious circumstances and that when the police party approached the car, two persons occupying the rear seat of the car fled away. He further stated that the police party

prevented the escape of two other persons who were also sitting in the car and that on inspecting the car, he found a rexin hand bag beneath the arm of the rear seat of the car which contained eight polythene covers of different sizes filled with ganja oil (hashish). PW.1 further stated that on weighing the packets it was found that the packets contained 2 Kgs. of hashish worth Rs.2 crores. This witness also stated that as per the request of the accused persons, search was conducted in the presence of a Gazetted Officer and the contraband articles were seized as per Ext.P4 mahazar. He further stated that samples were taken from the packets and sent for chemical analysis. PW.2 was an occurrence witness who stated that he happened to be at the places of incident and was a witness to Ext.P4 mahazar. He also identified accused Nos. 1 and 4. PW.3 was the registered owner of the car bearing Registration No.KL-6/9211 from which the seizure was effected. She stated that accused No.4 was the driver of the car. PWs.4, 5 and 6 were employees of a hotel. They were examined to prove that the accused persons had checked in at that hotel on 29.3.1999 before proceeding to Pala on 30.3.1999. PW.7 was the gold smith who weighed the contraband articles. PW.8 was the expert at the Forensic Science Laboratory, Thiruvananthapuram who examined the samples and issued Ext.P10 report. PW.9 was the Circle Inspector of Police, Pala who conducted the initial investigation of the case. He stated

that he took up the investigation of the case on the basis of the report of PW.1 and questioned the witnesses. PW.10 was the Circle Inspector of Police who continued the investigation and laid the charge before the court below.

6. The version given by PW.1 is supported by the evidence of PW.2, an independent witness who happened to be at the place of occurrence during the relevant time. The trial court accepted the evidence of these two witness. The trial court also considered the evidence of PWs.9 and 10 who conducted investigation of the case. Ext.P10 report was also accepted by the trial court. The fourth accused was the driver of the car and the trial court found that there was nothing on record to show that the 4th accused was aware of the materials carried by the occupants of the car. With regard to the second accused, there is no evidence to show under what circumstances he was restrained by the local people. That apart, PW.9 had stated that detection of the crime was reported to him by PW.1. Considering the entire facts and circumstances of the case, this Court is of the view that the involvement of the appellant in the case is proved beyond reasonable doubt. In the above circumstances, the contentions raised by the learned counsel appearing for the appellant are not sustainable.

The Crl. Appeal is accordingly dismissed, confirming the judgment of the trial court.

(K.THANKAPPAN, JUDGE)

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